

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

CASE NO. _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

LISTER HARRELL; SARALAND, L.L.L.P;
MIDDLE GEORGIA ROAD BUILDERS,
INC.; and ROBERT SUTTON,

Defendants.

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b), (d), to obtain injunctive relief and civil penalties against Defendants Lister Harrell; Saraland, L.L.L.P. (“Saraland”); Middle Georgia Road Builders, Inc. (“MGRB”); and Robert Sutton; for their unauthorized discharges of pollutants into waters of the United States in Dodge County, State of Georgia, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

2. In this action, the United States seeks: (a) to obtain injunctive relief permanently prohibiting Defendants from further discharges of pollutants into waters of the United States unless in compliance with the CWA; (b) to obtain injunctive relief compelling Defendants, at

their own expense and at the direction of EPA, to restore and/or mitigate the impacts of their unlawful activities; and (c) to secure a civil penalty in favor of the United States and against Defendants.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the Southern District of Georgia pursuant to section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendants conduct business in this District; the waters of the United States into which Defendants discharged pollutants are located in this District; and the causes of action alleged in this Complaint arose in this District.

5. The United States has provided notice of the commencement of this action to the State of Georgia pursuant to section 309(b) of the CWA, 33 U.S.C. § 1319(b).

PARTIES

6. The Plaintiff in this action is the United States of America, and authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and section 506 of the CWA, 33 U.S.C. § 1366.

7. Defendant Lister Harrell is an individual who resides in the State of Georgia and has a business address of 369 Ocmulgee Church Road, Eastman, Dodge County, Georgia. Mr. Harrell is the President and Registered Agent of Defendant Saraland.

8. Defendant Saraland is a business entity registered in the State of Georgia, with a principal business address of 369 Ocmulgee Church Road, Eastman, Dodge County, Georgia.

Defendant Saraland is the owner of the site where Defendants discharged pollutants into waters of the United States, as described in paragraphs 38 through 44 below.

9. Defendant MGRB is a business entity registered in the State of Georgia, with a principal business address of 155 Central Drive, East Dublin, Laurens County, Georgia.

10. Defendant Robert Sutton is an individual who resides in the State of Georgia and has an address of 1061 Old Savannah Road, East Dublin, Laurens County, Georgia.

STATUTORY AND REGULATORY BACKGROUND

11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” “[e]xcept as in compliance with,” inter alia, a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

13. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, dredged spoil, rock, sand, and cellar dirt.

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

15. 40 C.F.R. § 230.3(s) defines “waters of the United States” to include, inter alia: (i) traditional navigable waters, that is, all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) tributaries to traditional navigable waters or interstate waters; and (iii) adjacent wetlands.

16. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may

be discharged.”

17. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include, inter alia, an “individual,” “corporation,” “partnership,” or “association.”

18. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the United States Army Corps of Engineers (“Corps”) to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites.

19. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person that violates 33 U.S.C. § 1311(a).

20. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person that violates 33 U.S.C. § 1311(a).

GENERAL ALLEGATIONS

21. This case involves unauthorized discharges of pollutants into four tributaries of Gum Swamp Creek in Dodge County, State of Georgia, referred to in this Complaint as: “Stream 1,” “Stream 2,” “Stream 3,” and “Stream 4.” This case also involves unauthorized discharges of pollutants into wetlands adjacent to those tributaries.

22. Gum Swamp Creek originates in the State of Georgia and flows through Telfair, Dodge, Bleckley, and Twiggs Counties.

23. Gum Swamp Creek flows into the Little Ocmulgee Lake.

24. Below (i.e., downstream of) Little Ocmulgee Lake, Gum Swamp Creek becomes the Little Ocmulgee River.

25. The Little Ocmulgee River flows into the Ocmulgee River.

26. The Ocmulgee River provides the principal drainage for the coastal plain of central Georgia.

27. The Ocmulgee River flows into the Altamaha River.

28. The Altamaha River flows into the Atlantic Ocean.

29. Little Ocmulgee Lake, the Little Ocmulgee River, the Ocmulgee River, and the Altamaha River are traditional navigable waters in that they are currently used, were used in the past, or may be susceptible to use in interstate commerce.

30. At all times relevant to this Complaint, Stream 1, Stream 2, Stream 3, and Stream 4 originated just south of the intersection of Plainfield Road and Eastman Highway.

31. At all times relevant to this Complaint, Stream 1, Stream 2, Stream 3, and Stream 4 were tributaries to Gum Swamp Creek.

32. At all relevant times, there were wetlands adjacent to Stream 1, Stream 2, Stream 3 and Stream 4.

33. At all times relevant to this Complaint, Stream 1 and its adjacent wetlands significantly affected the chemical, physical, and/or biological integrity of traditional navigable waters including, but not limited to, Little Ocmulgee Lake.

34. At all times relevant to this Complaint, Stream 2 and its adjacent wetlands significantly affected the chemical, physical, and/or biological integrity of traditional navigable waters including, but not limited to, Little Ocmulgee Lake.

35. At all times relevant to this Complaint, Stream 3 and its adjacent wetlands significantly affected the chemical, physical, and/or biological integrity of traditional navigable waters including, but not limited to, Little Ocmulgee Lake.

36. At all times relevant to this Complaint, Stream 4 and its adjacent wetlands significantly affected the chemical, physical, and/or biological integrity of traditional navigable waters including, but not limited to, Little Ocmulgee Lake.

37. At all times relevant to this Complaint, Stream 1, Stream 2, Stream 3, Stream 4, all adjacent wetlands to Streams 1 through 4, Gum Swamp Creek, Little Ocmulgee Lake, Little Ocmulgee River, Altamaha River, and the Atlantic Ocean each constituted “waters of the United States” and “navigable waters” under section 502(7) of the CWA, 33 U.S.C. § 1362(7).

38. Beginning in May 2006, or at times best known to Defendants, Defendants Lister Harrell and Saraland commenced a project to create a lake on property known as “Saraland Plantation,” which is owned by Saraland in Dodge County, State of Georgia.

39. With respect to the project, Defendants Lister Harrell and Saraland entered into an agreement with Defendants MGRB and Robert Sutton for the construction of a private recreational lake approximately 200 acres in size at Saraland Plantation.

40. Pursuant to the agreement with Defendants Lister Harrell and Saraland, from some time in May 2007 through September 2008, or at times known best to Defendants, Defendants MGRB and Robert Sutton mechanically cleared and graded the recreational lake area and constructed a dam at the Saraland Plantation on Stream 1 just downstream of the points at which Stream 2, Stream 3, and Stream 4 join Stream 1 and just upstream of Stream 1’s confluence with Gum Creek Swamp.

41. From some time in May 2007 through September 2008, or at times best known to Defendants, one or more of Defendants and/or persons acting on their behalf discharged dredged or fill material into Stream 1 and its adjacent wetlands without having obtained and complied

with a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344.

42. From some time in May 2007 through September 2008, or at times best known to Defendants, one or more of Defendants and/or persons acting on their behalf discharged dredged or fill material into Stream 2 and its adjacent wetlands without having obtained and complied with a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344.

43. From some time in May 2007 through September 2008, or at times best known to Defendants, one or more of Defendants and/or persons acting on their behalf discharged dredged or fill material into Stream 3 and its adjacent wetlands without having obtained and complied with a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344.

44. From some time in May 2007 through September 2008, or at times best known to Defendants, one or more of Defendants and/or persons acting on their behalf discharged dredged or fill material into Stream 4 and its adjacent wetlands without having obtained and complied with a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344.

45. Each Defendant conducted, contracted for, supervised, was responsible for, and/or otherwise controlled the unauthorized activities described in Paragraphs 38 through 44.

46. Each Defendant is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

47. The dredged or fill material that one or more of Defendants and/or persons acting on their behalf discharged included, among other things, dirt, spoil, rock, and sand, all of which constitute “pollutants” as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

48. To accomplish the discharges, one or more of Defendants and/or persons acting on their behalf used earth-moving equipment, which constituted “point sources” as defined in

section 502(14) of the CWA, 33 U.S.C. § 1362(14).

49. Defendants did not obtain a permit from the Corps for their discharges of dredged or fill material into waters of the United States as required by sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a) and 1344.

50. Each day that dredged or fill material discharged without authorization remains in place constitutes a separate violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

51. Unless enjoined, Defendants are likely to continue to violate the CWA's proscription against unauthorized discharges of pollutants.

52. On or about November 21, 2007, and on or about June 20, 2008, EPA issued administrative compliance orders, which directed the Defendants, among other things, to come into compliance with CWA Section 404, 33 U.S.C. § 1344, with respect to unauthorized discharges into waters of the United States, including submission of a restoration plan to restore waters of the United States at Saraland Plantation to their condition prior to the activities discussed in Paragraphs 38 through 44.

53. None of the Defendants has fully complied with the administrative compliance orders.

54. On or about March 25, 2012, Defendants Lister Harrell and Saraland filed a petition in bankruptcy in the Southern District of Georgia Bankruptcy Court.

55. Section 362(a) of Title 11 of the United States Code provides that the filing of a petition in bankruptcy operates as a stay of:

(1) the commencement or continuation . . . of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of this case under this title;

11 U.S.C. § 362(a)(1). Section 362(b)(4) of the Bankruptcy Code specifies that the automatic stay does not apply to the “commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police or regulatory power, including the enforcement of a judgment other than a money judgment.” 11 U.S.C. § 362(b)(4).

56. The United States’ enforcement of environmental laws enacted to protect public health and safety is a classic exercise of police and regulatory authority.

COUNT ONE: UNAUTHORIZED POLLUTANT DISCHARGES INTO STREAM 1
AND ADJACENT WETLANDS

57. The United States repeats and realleges the allegations set forth in Paragraphs 1 through 56.

58. Defendants added pollutants from a point source into Stream 1 and its adjacent wetlands without authorization.

59. Defendants’ activities respecting Stream 1 violated section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

COUNT TWO: UNAUTHORIZED POLLUTANT DISCHARGES INTO STREAM 2
AND ADJACENT WETLANDS

60. The United States repeats and realleges the allegations set forth in Paragraphs 1 through 59.

61. Defendants added pollutants from a point source into Stream 2 and its adjacent wetlands without authorization.

62. Defendants’ activities respecting Stream 2 violated section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT THREE: UNAUTHORIZED POLLUTANT DISCHARGES INTO STREAM 3
AND ADJACENT WETLANDS

63. The United States repeats and realleges the allegations set forth in Paragraphs 1 through 62.

64. Defendants added pollutants from a point source into Stream 3 and its adjacent wetlands without authorization.

65. Defendants' activities respecting Stream 3 violated section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT FOUR: UNAUTHORIZED POLLUTANT DISCHARGES INTO STREAM 4
AND ADJACENT WETLANDS

66. The United States repeats and realleges the allegations set forth in Paragraphs 1 through 65.

67. Defendants added pollutants from a point source into Stream 4 and its adjacent wetlands without authorization.

68. Defendants' activities respecting Stream 4 violated section 301(a) of the CWA, 33 U.S.C. § 1311(a).

COUNT FIVE: VIOLATION OF ORDERS

69. The United States repeats and realleges the allegations set forth in Paragraphs 1 through 68.

70. In issuing the administrative compliance orders referenced in Paragraph 52, EPA directed the Defendants to take actions to come into compliance under the Clean Water Act.

71. To date, Defendants have not submitted a final restoration plan for EPA review and approval or disapproval, or restored waters of the United States at Saraland Plantation to

their pre-disturbance condition.

72. Defendants have not complied with the Orders referenced in Paragraph 52, in violation of CWA Section 309(d), 33 U.S.C. § 1319(d).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court order the following relief:

Permanently enjoin Defendants from discharging pollutants into waters of the United States except in compliance with the CWA;

Compel Defendants to undertake measures, at Defendants' own expense and at the direction of EPA, to effect restoration of Stream 1, Stream 2, Stream 3, and Stream 4, and the wetlands adjacent thereto, and to conduct mitigation for unauthorized impacts to waters of the United States, as appropriate;

Assess Defendants civil penalties pursuant to sections 309(d) of the CWA, 33 U.S.C. § 1319(d), for each day for each violation of the CWA;

Award the United States costs and disbursements in this action; and

Grant the United States such other relief as the Court may deem just and proper.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General

MARTIN F. McDERMOTT
Illinois Bar No. 6183307
MARTHA C. MANN
Florida Bar No. 155950
martin.mcdermott@usdoj.gov
martha.mann@usdoj.gov
U.S. Department of Justice

Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-4122 (McDermott)
(202) 514-2664 (Mann)
Facsimile: (202) 514-8865

Dated: December 31, 2012

EDWARD J. TARVER
United States Attorney
/s/ Kenneth D. Crowder
KENNETH D. CROWDER
Assistant United States Attorney
Georgia Bar No. 123985
P.O. Box 2017
Augusta, Georgia 30903
Telephone: (706) 724-0517

Of Counsel:

Philip G. Mancusi-Ungaro
United States Environmental Protection Agency
Office of Regional Counsel, Region 4
61 Forsyth Street SW
Mail Code: 9T25
Atlanta, GA 30303-8960

Amanda Helwig
United States Environmental Protection Agency
Office of Civil Enforcement - OECA
Ariel Rios Building (Mail Code 2243A)
1200 Pennsylvania Avenue NW
Washington, DC 20460